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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,444	09/30/2003	Matthias Giese	103-001PUS	7837
67304 7590 09/14/2010 GRUND INTELLECTUAL PROPERTY GROUP NIKOLAISTRASSE 15 MUNICH, 80802 GERMANY				
EXAMINER				
HUMPHREY, LOUISE WANG ZHIYING				
ART UNIT		PAPER NUMBER		
1648				
MAIL DATE		DELIVERY MODE		
09/14/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/675,444

Applicant(s)

GIESE, MATTHIAS

Examiner

LOUISE HUMPHREY

Art Unit

1648

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 August 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 19 August 2010. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
b) ☐ They raise the issue of new matter (see NOTE below);
c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Zachariah Lucas/
Supervisory Patent Examiner, Art Unit 1648

Continuation of 11, does NOT place the application in condition for allowance because: Applicant's arguments have been fully considered but are not persuasive. Applicants argue that the skilled person would not be motivated to combine Tobiasch's disclosure of ORF's 5 and 7 with Snijder's disclosure of ORF2 because ORF2 is not taught to greatly increase immune response in mice when coadministered with ORF 5, 6 and an IL-2 vector or with ORF4. However, the ORF4, 6 and IL-2 are not relevant to the rejection at issue. Applicant repeated the same argument that Table 2 in the Tobiasch reference, showing lower amount of immune response elicited by ORF5+7 combined than by either ORF5 or ORF7 alone, teaches away from the claimed invention. Applicant further argue that the T cells would not be expected to recognize ORF7 hidden under the virus envelope lipids and proteins (page 12-13 of the response filed 19 August 2010) but does not clarify how this affects the amount of immune response generated by a sequence consisting of all three ORF's 2, 5 and 7. The motivation for combining the Tobiasch and Snijder references is to generate immune responses against both the ORF2, encoding the minor envelope glycoprotein, and the ORF5, encoding the major membrane glycoprotein, which are the major structural components of the virus. When ORF2+5+7 is inside the same sequence and presented together, such an antigen is structurally closer to the native virus than the antigen of a single ORF. Therefore, an immune response elicited by an antigen that is a better mimic of the virus would generate a broader immune response that more effectively recognizes the EAV. As set forth in the previous advisory action dated 27 May 2010, the rationale for the prima facie obviousness does not hinge on increasing the % of immune response against a single ORF, but rather, on broadening the immune response against a whole virus. It appears that Applicant has not grasped this rationale and has mischaracterized and misunderstood the citation of the prior art that is relied upon in the rejection. See also the interview summary dated 04 June 2010. Applicant's allegation of examiner's interpretation of the data as both meaningful and meaningless (page 14 of the response) has misconstrued the rejection rationale and the meaning of the Table 2 in the Tobiasch reference. Table 2 of the Tobiasch reference was never relied upon in the rejection at issue. Therefore, Examiner never cited the Table as "meaningful" and later interpreted it as "meaningless" as Applicant alleged. Examiner only disagreed with Applicant's reliance on the Table 2 when arguing that the Tobiasch reference teaches away from the claimed invention. Therefore, the rejection has been maintained for reasons of record.